

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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:  
ROBERT ALLEN LEE, Individually and on :  
behalf of all others similarly : 11-CV-8665 (PAC)  
situated, :  
:  
Plaintiff, :  
v. :  
MAKHNEVICH, et al., : 500 Pearl Street  
:  
Defendants. : New York, New York  
:  
-----X  
September 9, 2013

TRANSCRIPT OF CIVIL CAUSE FOR MOTION FOR RELIEF OF COUNSEL  
BEFORE THE HONORABLE PAUL A. CROTTY  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: MICHAEL POTENZA, ESQ.  
DUSTIN NOFZIGER, ESQ.  
Debevoise & Plimpton LLP  
919 Third Avenue  
New York, New York 10022

For the Defendant: DAVID MARC SCHWARTZ, ESQ.  
The Schwartz Law Firm  
5402 Third Avenue  
Brooklyn, New York 11220

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1 THE CLERK: Your Honor, this is the matter of Counsel  
2 in the matter of Robert Allen Lee, Individually on behalf all  
3 others similarly situated v. Stacy Makhnevich, et al., Docket  
4 Number 11-CV-8665.

5 Counsel for plaintiff, please state your  
6 appearances.

7 MR. POTENZA: Your Honor, Michael Potenza, Debevoise  
8 & Plimpton on behalf of plaintiff. With me is Dustin  
9 Nofziger. Mr. Nofziger's application to the bar of this court  
10 is pending. With Your Honor's permission he will be  
11 presenting today.

12 THE COURT: He's welcome. What happened to Mr. Levy?

13 MR. POTENZA: Mr. Levy is D.C. today, Your Honor.

14 THE CLERK: For defendant.

15 MR. SCHWARTZ: Good afternoon, Your Honor. David  
16 Schwartz for Stacy Makhnevich.

17 THE COURT: How are you, Mr. Schwartz?

18 MR. SCHWARTZ: Good to see you.

19 THE COURT: Mr. Potenza, what's the problem now?

20 MR. POTENZA: I'm sorry.

21 THE COURT: You have some objections to Mr.  
22 Schwartz's being relieved?

23 MR. POTENZA: Well, the problem is we don't know  
24 exactly who he is representing, which entities he's  
25 representing, and if I could my colleague, Mr. Nofziger is

1 more familiar with the --

2 THE COURT: Okay. Mr. Nofziger, didn't mean to cut  
3 you off. Go ahead.

4 MR. NOFZIGER: Your Honor, we're before the Court  
5 today because on August 16<sup>th</sup> Mr. Schwartz's associate Jen  
6 Stevens told plaintiff's counsel that Gurstman Schwartz [Ph.]  
7 had only been retained by the individual defendant Stacy  
8 Makhnevich and not by the entity defendants. In addition, on  
9 August --

10 THE COURT: Wait, wait. The August 16<sup>th</sup> letter says I  
11 represent Stacy Makhnevich and Aster Dental.

12 MR. NOFZIGER: In a prior communication to our co-  
13 counsel at Public Citizen James Stevens who is Mr. Schwartz's  
14 associate told Ms. Patterson that Gurstman Schwartz, the firm,  
15 has only been retained by the individual defendant Stacy  
16 Makhnevich and not by the entity defendants. In addition, he  
17 sent an email to plaintiff's counsel on August 16<sup>th</sup> where he  
18 said that in response to our request he had tried to reach out  
19 to the entity defendants, that he had called Aster Dental, the  
20 main number for Aster Dental, spoken to a woman who is the  
21 owner there and that woman said that Aster Dental had no  
22 connection to Stacy Makhnevich. This was prior to the letter  
23 that Mr. Schwartz sent to the court on the same date stating  
24 that Mr. Schwartz does in fact represent Aster Dental.

25 Obviously it's concerning to us if Mr. Schwartz does

1 not represent all defendants because he accepted service for  
2 defendants in January 2012. He's appeared on behalf of all  
3 defendants. He filed a motion to dismiss and an answer on  
4 behalf of Aster Dental. He wrote a letter to the court on  
5 February 21, 2012 where he said that "My firm is representing  
6 all defendants in the above captioned action," and even his  
7 motion to withdraw is a motion to withdraw from representation  
8 of both Stacy Makhnevich as an individual and Aster Dental.

9 THE COURT: So what's the problem?

10 MR. NOFZIGER: Well, the problem, Your Honor, is that  
11 we need to know who exactly Mr. Schwartz represents and  
12 what --

13 THE COURT: Well --

14 MR. NOFZIGER: I'm sorry.

15 THE COURT: I thought he said who he did represent.  
16 Mr. Schwartz, who do you represent?

17 MR. SCHWARTZ: My notice of appearance was for Stacy  
18 Makhnevich and Aster Dental.

19 THE COURT: Okay. Aster Dental according to the  
20 caption of the case is a series of entities.

21 MR. SCHWARTZ: Yes, Your Honor.

22 THE COURT: Also known as, right, Chrysler Building  
23 and Northeast P.C. and Southeast Dental and Lincoln Square  
24 Dental Arts in Manhattan.

25 MR. SCHWARTZ: That's correct.

1 THE COURT: Apparently the dentist had offices on the  
2 east side and the west side of Manhattan. That's what I infer  
3 from those names but -- what more do you want, Mr. Nofziger?

4 MR. NOFZIGER: Your Honor, we'd like Mr. Schwartz to  
5 state on the record which of the entities he in fact  
6 represents, what the basis for that representation is and why  
7 his associate told us that his firm does not in fact represent  
8 Aster Dental and the defendants.

9 THE COURT: If he wants to he can. Mr. Schwartz.

10 MR. SCHWARTZ: I wasn't there for that conversation  
11 but if he said it he's new to my office.

12 THE COURT: He made a mistake.

13 MR. SCHWARTZ: So he made a mistake if he did say  
14 that.

15 THE COURT: So do you want to state for the record,  
16 Mr. Schwartz, one further time who you represent?

17 MR. SCHWARTZ: I represent Stacy Makhnevich and Aster  
18 Dental.

19 THE COURT: Mr. Nofziger, what more do you want? I  
20 mean under Romeo & Juliette this is -- parting is such sweet  
21 sorrow. Mr. Schwartz wants to get out and I for the life of  
22 me I can't see why we shouldn't let him out in light of -- you  
23 say you wanted to know certain facts. He's told you what  
24 those facts are.

25 MR. NOFZIGER: Your Honor, we just -- we're not

1 opposed I think at this point in time to allowing Mr. Schwartz  
2 to withdraw.

3 THE COURT: He's a lucky man then and order he's  
4 withdrawn.

5 MR. NOFZIGER: But we just wanted to know on the  
6 record who he represented given the --

7 THE COURT: He's told you that now.

8 MR. NOFZIGER: Okay.

9 THE COURT: He's told you that repeatedly.

10 MR. NOFZIGER: So I think unless my co-counsel has  
11 anything further --

12 THE COURT: Mr. Potenza, do you have anything you  
13 want to add?

14 MR. POTENZA: I have nothing to add, Your Honor.  
15 Thank you.

16 THE COURT: All right.

17 MR. SCHWARTZ: Just for the record, we did comply  
18 with all the discovery that you asked us to to the best of our  
19 ability.

20 THE COURT: Is that right, Mr. Nofziger?

21 MR. NOFZIGER: To the best of their ability is  
22 correct.

23 THE COURT: So, Mr. Schwartz, you're relieved.

24 MR. SCHWARTZ: Thank you, Your Honor.

25 THE COURT: This is being transcribed?

1 THE CLERK: Yes, Your Honor.

2 THE COURT: So the transcript will contain an oral  
3 order and it will be entered in on ECF today that the motion  
4 by Mr. Schwartz to be relieved as counsel, the Schwartz law  
5 firm relieved as counsel for Stacy Makhnevich and Aster Dental  
6 is granted.

7 MR. NOFZIGER: Your Honor, we would also request that  
8 you order Stacy Makhnevich and the named defendants to appear  
9 in this proceeding.

10 THE COURT: Well, I'm not going to order that. If  
11 they don't you take a default against Ms. Makhnevich. You  
12 personally serve her and Aster Dental of course is a  
13 corporation and it must appear by counsel.

14 MR. NOFZIGER: So if they don't appear in a period of  
15 time --

16 THE COURT: You schedule a proceeding or you notice  
17 their deposition. You take action that requires some kind of  
18 response and there's no response you bring that to my  
19 attention and we'll consider what relief is appropriate.

20 MR. NOFZIGER: Thank you, Your Honor.

21 THE COURT: But obviously you have a lawsuit pending  
22 here, Mr. Nofziger. I don't want to do anything to interfere  
23 with you and the prosecution of your rights that requires the  
24 participation and cooperation of the defendant. If they  
25 choose not to participate or cooperate there's statutory and

1 rule consequences to that. So I'm sure you can figure it out  
2 from there.

3 MR. NOFZIGER: Yes, Your Honor. Thank you.

4 THE COURT: Thank you very much. Thank you, Mr.  
5 Schwartz.

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1 I certify that the foregoing is a court transcript from  
2 an electronic sound recording of the proceedings in the above-  
3 entitled matter.

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6 Shari Riemer

7 Dated: September 10, 2013  
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